

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR 29 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0339-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
KUSHAWN LAMONT PITTMAN,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20052840 and CR-20054286 (Consolidated)

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Petitioner

B R A M M E R, Judge.

¶1 Petitioner Kushawn Lamont Pittman pled guilty in CR-20052840 to an amended charge of attempted possession of a narcotic drug for sale, a class three felony. Simultaneously, in CR-20054286, he pled guilty to possession of a deadly weapon by a prohibited possessor, a class four felony, and an amended charge of attempted possession

of a narcotic drug for sale, a class three felony. In both cases, he also admitted having a previous felony conviction in CR-20013149 for possessing a narcotic drug.

¶2 The trial court sentenced him in CR-20052840 to an enhanced, presumptive 6.5-year prison term and in CR-20054286 to concurrent, enhanced, presumptive terms of 4.5 and 6.5 years. The court ordered the concurrent sentences in CR-20054286 to be served consecutively to Pittman's sentence in CR-20052840, making his total effective sentence thirteen years.

¶3 In an of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., Pittman argued his consecutive sentences were excessive under the circumstances of his case. In brief, he maintained that his offenses were attributable to his drug addiction, which was itself the product of his traumatic childhood, lack of parental or family support, and mental health issues, including depression and post-traumatic stress disorder (PTSD). He contended those circumstances, plus the nonviolent nature of his offenses, were all mitigating factors to which the sentencing court should have given more weight and thus imposed concurrent rather than consecutive sentences.

¶4 In a thorough minute entry, the trial court reviewed the procedural history of the case, Pittman's arguments, and the applicable law before ruling as follows:

Petitioner has failed to adduce any evidence to support his claim that the Court abused its discretion in ordering consecutive, presumptive sentences. Petitioner committed two separate crimes on two different dates [in July and October 2005]. His two plea agreements did not stipulate that his sentences must be concurrent. By accepting the plea

agreements in both CR 20052840 and CR 20054286, Petitioner agreed to be sentenced to any term within the range set forth in those agreements. . . .

At the Sentencing, the Petitioner received the presumptive sentences provided for in both pleas. The Petitioner's actual sentence, thirteen years, was almost twenty years less than what he had voluntarily agreed to accept by the plea agreements. Thus his argument that he has been prejudiced by a thirteen-year sentence is without merit. The Court noted the Petitioner's extensive criminal history, including eight prior felonies[,] and balanced those factors against Petitioner's stated remorse and medical condition. The Court noted on the record that it felt that the Petitioner's case actually warranted aggravated sentence[s].¹

¶5 The arguments Pittman advanced below appear nearly verbatim in his petition for review. The trial court's minute entry clearly identified, thoroughly discussed, and correctly resolved those arguments, and we have little to add to the trial court's resolution of Pittman's claim. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court['s] rehashing the trial court's correct ruling in a written decision"). We can find no abuse of the trial court's discretion, either in imposing consecutive,

¹Before imposing presumptive sentences, the trial court stated: "I was prepared to give you aggravated sentences, Mr. Pittman, today. [But] I've considered in mitigation your stated remorse[,] which I believe to be genuine[,] and your medical condition." Pittman's "medical condition" is apparently a bullet that is lodged close to his heart and cannot be surgically removed. He ascribes his PTSD and depression to the bullet and, presumably, the incident during which he was shot.

presumptive sentences initially or in subsequently denying post-conviction relief. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986) (“A petition for post-conviction relief is addressed to the sound discretion of the trial court and the decision of the court will not be reversed unless an abuse of discretion affirmatively appears.”).

¶6 Accordingly, we grant the petition for review, but we deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge